

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
JAMAL HART	:	
a/k/a MARK MAJOR	:	
a/k/a MICHAEL GORDEN	:	NO. 97-21

**MEMORANDUM AND ORDER**

HUTTON, J.

October 14, 1997

Presently before this Court is the Defendant's Motion to Dismiss for Speedy Trial Violation (Docket No. 47) and the Government's response thereto.

**I. BACKGROUND**

On October 11, 1996, officers of the Philadelphia Police Department arrested the defendant and seized a .357 magnum Smith and Wesson handgun from his person during a routine traffic stop in North Philadelphia. On January 21, 1997, a grand jury indicted and charged the defendant with one count of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). Following his indictment, the defendant made his initial appearance in court on January 30, 1997. On September 25, 1997, the defendant filed the instant motion with this Court.

## II. DISCUSSION

The defendant argues that the indictment against him should be dismissed with prejudice due to violations of the Speedy Trial Act. Under the Speedy Trial Act:

[T]rial of a defendant charged in an . . . indictment with the commission of an offense shall commence within seventy days of the filing date (and making public) of the . . . indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.

18 U.S.C. § 3161 (c)(1) (1985). However, certain periods of delay are "excluded . . . in computing the time within which the trial of any offense must commence." 18 U.S.C. § 3161(h).

Under Section 3161(h)(1)(F), the following period of delay is excluded from the seventy-day calculation: "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such a motion." 18 U.S.C. § 3161(h)(1)(F). Further, "[a]ny pretrial motion, including a motion for the extension of time, is a pretrial motion within the meaning of Section 3161(h)(1)(F) and creates excludable time, even if it does not in fact delay trial." United States v. Arbelaez, 7 F.3d 344, 347 (3d Cir. 1993) (citations omitted). Under the Eastern District's Plan for Prompt Disposition of Criminal Cases ("Eastern District's Plan"), though, the period of delay under

Section 3161(h)(1)(F) is limited to sixty days. Eastern District's Plan at 14, ¶ 6(a).

Moreover, a continuance may give rise to excludable time for Speedy Trial purposes. Under subsection (h)(8)(A), the following delay is excluded:

Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel . . . , if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of the continuance outweigh the best interests of the public and the defendant in a speedy trial.

18 U.S.C. § 3161(h)(8)(A).

In the instant case, the indictment was unsealed on February 3, 1997, thus beginning the Speedy Trial Act period. 18 U.S.C. § 3161(c)(1). Although the trial was originally scheduled to begin on April 14, 1997, the defendant filed a motion requesting a continuance on March 28, 1997. This Court granted that motion on April 3, 1997, and later set October 14, 1997, as the date of trial. In the order granting the continuance, this Court set forth its reasons for finding that "the ends of justice served by the granting of the continuance outweigh[ed] the best

interests of the public and the defendant in a speedy trial." Id. § 3161(h)(8)(A); see United States v. Hart, No. 97 Cr. 21 (E.D. Pa. April 3, 1997) (finding that the continuance was necessary "to allow newly appointed counsel adequate time to prepare" for trial). Thus, the period between April 14, 1997, which was the original date of trial, and October 14, 1997, which is the new date of trial, is excluded for Speedy Trial Act purposes. 18 U.S.C. § 3161(h)(8)(A).

Due to this continuance, the period from April 14, 1997, through the present is considered excluded time. Thus, less than seventy non-excludable days have expired for section 3161(c) purposes. Therefore, dismissal pursuant to the Speedy Trial Act is clearly improper.

An appropriate Order follows.

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O R D E R

AND NOW, this 14th day of October, 1997, upon consideration of the Defendant's Motion to Dismiss for Speedy Trial Violation (Docket No. 47), and the Government's response thereto, IT IS HEREBY ORDERED that the Defendant's Motion is **DENIED**.

BY THE COURT:

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HERBERT J. HUTTON, J.